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TWITCH INTERACTIVE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

19 B.S.D. CROWN, LTD.,
20 Plaintiff,
21 v.
22 AMAZON.COM, INC.,
23 AMAZON WEB SERVICES, INC., AND
24 TWITCH INTERACTIVE, INC.,
Defendants.

Case No. 3:23-CV-00057-WHO

[PROPOSED] ORDER AND STIPULATION
RE: DISCOVERY OF ELECTRONICALLY
STORED INFORMATION

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
 3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
 4 determination of this action, as required by Federal Rule of Civil Procedure 1.” In the event of a
 5 conflict between this Order and the Federal Rules of Civil Procedure or any other discovery rules
 6 or orders, this Order shall control.

7 2. This Order may be modified in the Court’s discretion or by agreement of the parties.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
 9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
 10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency
 12 and reduce costs will be considered in cost-shifting determinations.

13 5. The parties are expected to comply with the District’s E-Discovery Guidelines
 14 (“Guidelines”).

Rules Governing the Production of ESI

16 6. Absent agreement of the parties or further order of this Court, the following
 17 parameters shall apply to ESI production:

18 a. **General Document Image Format.** Except as otherwise provided for in
 19 this Stipulation, all documents existing in electronic format shall be
 20 produced in color in TIFF image or multi-page PDF files at a resolution of
 21 at least 300 dpi in accordance with the following:

22 i. **Images.** For production to Defendant, single page TIFF and for
 23 production to Plaintiff, multi-page PDF files shall be produced along
 24 with image load files that indicate the beginning and ending of each
 25 document, and associated multipage text files containing extracted
 26 text or OCR with load files containing all requisite information
 27 including relevant metadata. All hidden text (e.g., track changes,

1 speaker notes, hidden rows or columns, formulas, comments, markup
2 notes, etc.) shall be produced.

3 ii. In the event that production of a document in TIFF or PDF image file
4 format would be impracticable, the producing party shall have the
5 option of producing such document in native format. The producing
6 party shall provide documents in a searchable format, regardless of
7 whether the producing party produces documents in TIFF or PDF
8 image file format or native format. Load files shall tie together such
9 TIFF or PDF images and extracted text and indicate the location and
10 unitization of the files. If a document is more than one page, the
11 unitization of the document and any attachments and/or affixed notes
12 shall be maintained as they existed in the original document.
13 Regardless of the above, all spreadsheets should be produced in
14 native format with a corresponding bates stamped slip sheet.

15 iii. Metadata. Load files should include, where applicable, the following
16 information: See attached metadata list, **Exhibit A**.

17 iv. Production media and encryption of productions. Unless otherwise
18 agreed, the parties shall provide document production data on
19 external hard drives, SFTP, or other manner of electronic
20 transmission, as appropriate. The producing party may encrypt the
21 production data using encryption with complex passwords, and the
22 producing party may forward the password to decrypt the production
23 data separately from the external drive, SFTP, or other electronic
24 transmission to which the production data is saved.

25 v. Format for production of documents – hardcopy or paper documents.
26 All documents that are hardcopy or paper files shall be scanned and
27 produced in the same manner as documents existing in electronic
28 format, above. Reasonable efforts shall be made to scan the pages at

1 or near their original size and so that the image appears straight and
 2 not skewed. Physically oversized originals, however, may appear
 3 reduced. In addition, reducing image size may be necessary to
 4 display production numbers and confidentiality designations without
 5 obscuring text.

- 6 vi. Source code. This Stipulation does not govern the format for
 7 production of source code, which shall be produced pursuant to the
 8 relevant provision of the Protective Order.
- 9 vii. Attachments. If emails are produced, the parties shall produce email
 10 attachments together in families.
- 11 viii. Extracted Data. Extracted data will be produced in a delimited data
 12 file in accordance with the following technical specifications: (a) the
 13 first line of the data file must be a header row identifying the field
 14 name; (b) the data file must use the following default delimiters:
 15 (Comma “,” ASCII character 020; Quote “`” ASCII character 254;
 16 Newline “@” ASCII character 174; Multi-value “;” ASCII character
 17 59); (c) Date and DateTime fields in the data file must be provided
 18 in mm/dd/yyyy format; and (d) All attachments should sequentially
 19 follow the parent/document email and include data fields identifying
 20 documents as “parent” documents or “attachments” with appropriate
 21 group identifiers.
- 22 ix. Prior Productions. Materials from another litigation shall be
 23 produced in this litigation, to the extent reasonably feasible, in the
 24 same format as originally produced. This ESI agreement shall not
 25 apply to prior productions, except for Sections 1-5, 6(b), 14-16, 18-
 26 19, and 20.

- 27 b. **Footer.** Each document image shall contain a footer with a sequentially
 28 ascending production Bates number and confidentiality designation.

1 c. **Native Files.** A party that receives a document produced in a format
2 specified above may make a reasonable request to receive the document in
3 its native format, and upon receipt of such a request, the producing party
4 shall either object or produce the document in its native format to the extent
5 reasonably accessible. The parties will meet and confer to discuss any
6 objections. If the parties are unable to reach agreement with regard to
7 requests for additional documents in native-file format, the parties reserve
8 the right to seek relief from the Court. Documents produced natively shall
9 be represented in the set of imaged documents by a slipsheet indicating the
10 production identification number and confidentiality designation for the
11 native file that is being produced. A document produced as a native file must
12 include the following:

13 i. Documents produced in native file format will have the file name
14 named the same as the BEGDOC number;

15 ii. The full path of the native file will be provided in the data file for the
16 NATIVE_FILE field;

17 iii. When native files are produced because rendering the file to TIFF or
18 PDF would not result in viewable images, a TIFF or PDF image slip
19 sheet placeholder will be produced endorsed with the file name and
20 the legend “Document Produced in Native Format” (or something
21 similar);

22 iv. The confidentiality designation applied to any document under a
23 protective order entered in this action will be produced in the load
24 file in the DESIGNATION field and affixed to the placeholder.

25 d. **Databases.** Certain types of databases are dynamic in nature and will often
26 contain information that is neither relevant nor reasonably calculated to lead
27 to the discovery of admissible evidence. Thus, a party may opt to produce
28 relevant and responsive information from databases in an alternate form,

1 such as a report or data table. These reports or data tables will be produced
2 in a static format.

3 e. **Requests for Hi-Resolution Documents.** The parties agree to respond to
4 reasonable and specific requests for the production of higher resolution
5 images. Nothing in this Stipulation shall preclude a producing party from
6 objecting to such requests as unreasonable in number, timing or scope,
7 provided that a producing party shall not object if the document as originally
8 produced is illegible or difficult to read. The producing party shall have the
9 option of responding by producing a native-file version of the document. If
10 a dispute arises with regard to requests for higher resolution images, the
11 parties will meet and confer in good faith to try to resolve it.

12 f. **Foreign language documents.** All documents shall be produced in their
13 original language. Where a requested document exists in a foreign language
14 and the producing party also has an English-language version of that
15 document, unless privileged, the English-language version shall be produced
16 as well. Nothing in this agreement shall require a producing party to prepare
17 a translation, certified or otherwise, for foreign language documents that are
18 produced in discovery.

19 g. **Backups.**

20 The parties disagree on the necessity of the production of backup data in
21 this case.

22 **Plaintiff's proposed language:** "A party is required to restore archives or
23 backed-up data if information or documents responsive to a properly
24 served discovery request may be located in the archive or back-up hard
25 drive, server, tape, disk, SAN, or other form of media backup."

26 **Defendants' proposed language:** "Absent a showing of good cause, no
27 party need restore any form of media backed-up prior to January 5, 2023,
28 which is maintained in a party's normal or allowed processes, including but

not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.”

h. Voicemail, Instant Messages, and Mobile Devices. Absent a showing of good cause, voicemails, personal instant messaging applications, PDAs, and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

- i. **Miscellaneous Data.** Absent a showing of good cause, unallocated, slack space, deleted data, file fragments or other data accessible by use of computer forensics, and difficult to preserve ephemeral data is deemed not reasonably accessible and need not be collected and preserved. This includes data related to Random Access Memory (RAM), temporary files, and substantially duplicative backup or archived data.

Email Discovery

14 7. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
15 shall not include email or other forms of electronic correspondence (collectively “email”). To
16 obtain email, parties must propound specific email production requests.

17 8. Email production requests shall only be propounded for specific issues, rather than
18 general discovery of a product or business.

19 9. Email production requests shall be phased to occur after the parties have exchanged
20 initial disclosures and basic documentation about the patents, the prior art, the accused
21 instrumentalities, and the relevant finances. While this provision does not require the production
22 of such information, the Court encourages prompt and early production of this information to
23 promote efficient and economical streamlining of the case.

24 10. Email production requests shall identify the custodian, search terms, and time frame.
25 The parties shall cooperate to identify the proper custodians, proper search terms and proper
26 timeframe as set forth in the Guidelines.

27 11. Each requesting party shall limit its email production requests to a total of
28 [Plaintiff's proposal: fifteen] [Defendants' proposal: five] custodians per producing party for all

1 such requests. The parties may jointly agree to modify this limit without the Court's leave. The
 2 Court shall consider contested requests for additional custodians, upon showing a distinct need
 3 based on the size, complexity, and issues of this specific case. Cost-shifting may be considered as
 4 part of any such request.

5 12. Each requesting party shall limit its email production requests up to a total of
 6 [Plaintiff's proposal: twenty] [Defendants' proposal: five] search terms per custodian per party.
 7 The parties may jointly agree to modify this limit without the Court's leave. The Court shall
 8 consider contested requests for additional search terms per custodian, upon showing a distinct need
 9 based on the size, complexity, and issues of this specific case. The Court encourages the parties to
 10 confer on a process to test the efficacy of the search terms. The search terms shall be narrowly
 11 tailored to particular issues. Indiscriminate terms, such as the producing company's name or its
 12 product name, are inappropriate unless combined with narrowing search criteria that sufficiently
 13 reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g.,
 14 "computer" and "system") narrows the search and shall count as a single search term. A disjunctive
 15 combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and
 16 thus each word or phrase shall count as a separate search term unless they are variants of the same
 17 word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the
 18 production and shall be considered when determining whether to shift costs for disproportionate
 19 discovery. Should a party serve email production requests with search terms beyond the limits
 20 agreed to by the parties or granted by the Court pursuant to this paragraph, this shall be considered
 21 in determining whether any party shall bear all reasonable costs caused by such additional
 22 discovery.

23 13. Nothing in this Order prevents the parties from agreeing to use technology assisted
 24 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
 25 should be discussed pursuant to the District's E-Discovery Guidelines. Nor shall anything in this
 26 Order serve to limit a party's right to object to any discovery request on any ground.

27
 28

1 **Privilege and Lack of Waiver**

2 14. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
 3 privileged or work-product protected ESI is not a waiver in the pending case or in any other
 4 proceeding. The receiving party shall not use ESI that the producing party asserts is attorney-client
 5 privileged or work product protected to challenge the privilege or protection.

6 15. The mere production of ESI in a litigation as part of a mass production shall not
 7 itself constitute a waiver for any purpose.

8 16. Neither party will produce nor list on any privilege log any item protected by any
 9 privilege, immunity, or protection that occurred or was/is created on or after the filing date of this
 10 litigation except as required by Patent L.R. 3-7.

11 17. To the extent email is produced, the producing party may log all protected content
 12 in email chains and strings by logging the topmost email of the email chain or string, as well as
 13 sufficient information regarding any redacted or withheld material below the topmost email to
 14 allow the receiving party and the Court to make a cogent evaluation of the appropriateness of the
 15 assertion of a privilege or other protection. Sufficient information in the foregoing sentence
 16 includes an identification of the author, recipient(s), date ranges for each email sent, privilege
 17 asserted and general subject matter of the redacted or withheld material below the topmost email,
 18 to the extent this information differs from such information provided for the topmost email. A
 19 producing party's logging of the topmost email shall be deemed to assert protection for all of the
 20 protected material in an email string or chain, including multiple redactions or multiple segments.
 21 Nothing herein shall prevent the receiving party from challenging the propriety of the designation
 22 of attorney-client privilege, work product, or other designation of protection.

23 **Deduplication**

24 18. The parties agree to deduplicate documents prior to production where feasible.
 25 Duplicate documents may be withheld from production provided deduplication is handled in the
 26 following manner:

27 a. As to emails that have not been printed into a paper form and remain in
 28 electronic form, those emails will be considered duplicates if (i) the hash

1 values of two or more emails are identical, and (ii) the substantive text of the
2 email is exactly the same.

3 b. As for non-email electronic documents, these documents will be considered
4 duplicates if (i) they have the same hash value.

5 19. All duplicates must identify the duplicate custodians even if that duplicate custodian
6 is identified after a document has been produced. An updated duplicate custodian list must be
7 provided with each production where documents were not produced due to detected duplication.

8 **Effect on Discovery Obligations**

9 20. Except as expressly stated, nothing in this Order affects the parties' discovery
10 obligations under the Federal Rules of Civil Procedure, Local Rules, or other order of the Court.

11
12 **IT IS SO STIPULATED**, through Counsel of Record.

13
14 Dated: September 1, 2023

PERKINS COIE LLP

16 By:/s/ *Robin L. Brewer*
17 _____
18 Robin L. Brewer

19 *Attorneys for Defendants*
20 AMAZON.COM, INC.,
21 AMAZON WEB SERVICES, INC.,
22 TWITCH INTERACTIVE, INC.

23 Dated: September 1, 2023

ARMSTRONG TEASDALE LLP

23 By:/s/ *Francisco A. Villegas*
24 _____
25 Francisco A. Villegas

26 *Attorneys for Plaintiff*
27 BSD CROWN, LTD.
28

Exhibit A

Field Name	Field Description
BegDoc	Beginning Bates number as stamped on the production image
EndDoc	Ending Bates number as stamped on the production image
BegAttach	First production Bates number of the first document in a family
EndAttach	Last production Bates number of the last document in a family
Batesrng	Range of Bates numbers that make up the document.
ParentID	The BegDoc value of the document's parent
AttachNames	Semi-colons delimited list of original filenames of all attached documents
NumAttach	Total number of documents attached to the document
All Custodians	All custodians, de-duped and primary, associated with a file.
Email Subject	Subject line of email
SentDateTime	Sent date and time of an e-mail message
ReceivedDateTime	Received date and time of an e-mail message
To	All recipients that were included on the "To" line of the email
From	The name and email address of the sender of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
Author	Any value populated in the Author field of the document properties
LastAuthor	Last Saved By value pulled from native metadata
Filename	Filename of an electronic document
Filepath	Pathname of file's location
Filesize	Size of native file, in bytes
Title	Title value extracted from the native metadata
ModifiedDateTime	Date and time the native file was last modified
	this is called Last Author which is already added. Delete.
CreatedDate	Date the document was created (format: MM/DD/YYYY)
CreatedTime	Time the electronic document was created
TimeZoneProcessed	Time Zone Processed
DocExt	File extension of the document
MD5File	MD5 Hash of the actual contents of the document
NATIVELINK	Native File Link (Native Files only)

1	Text	Path to individual searchable text files
2	HasTrackChanges	Document has Track Changes
3	HasHiddenData	Document has Hidden Data such as (Comments, Row or Columns)
4	HasNotes	Document has Notes
5	Organization	Company extracted from native metadata
6	ConvIndex	E-mail thread identification
7	MD5Dupe	MD5 Hash used for deduplication (generally different than MD5File for emails)
8	Confidentiality	Confidentiality assigned to the document.
9	Redacted	If Redacted
10	Placeholder	Notation when slipsheet inserted
11	ProdRound	Production volume number
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[PROPOSED] ORDER

IT IS ORDERED that the forgoing Agreement is approved.

Dated:

Hon. William H. Orrick
U.S. District Judge

ATTESTATION CLAUSE

I, Francisco A. Villegas, am the ECF user whose credentials were used in this filing. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have consented to the filing of this document.

5 || Dated: September 1, 2023

By:/s/ Francisco A. Villegas
Francisco A. Villegas